



## REQUEST FOR PROPOSAL (RFP)

May 20, 2014

RFP NUMBER: 00520-14-DMTC

RFP SUBJECT: Dance, Music and Tennis Hobby Classes

SEALED PROPOSALS:  
SHOULD BE SUBMITTED ONLY TO: Purchasing Office / City Of Falls Church  
300 Park Avenue, Rm 300 East  
Falls Church, Virginia 22046 / Phone (703) 248-5007

SEALED PROPOSALS

DUE DATE AND TIME: **by no later than June 5, 2014 @ 11:00 A.M.**  
prevailing local time (Purchasing Office clock)

Proposals are to be presented for time and date validation **ONLY**  
to the **City of Falls Church Purchasing Office**.

All inquiries and questions should be made in writing and forwarded to George Armstrong, Purchasing Agent, via email to [garmstrong@fallschurchva.gov](mailto:garmstrong@fallschurchva.gov) with copy to [dwoodbury@fallschurchva.gov](mailto:dwoodbury@fallschurchva.gov) by no later than **five (5) business days prior to the RFP due date** (May 29, 2014).

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**THIS PAGE MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSAL**

In compliance with this Request For Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal.

*Please type or legibly print all information.*

FULL LEGAL NAME & ADDRESS OF Offeror:

\_\_\_\_\_  
Company's Legal Name By: \_\_\_\_\_  
Authorized Representative - Signature in Ink

\_\_\_\_\_  
Street Address (Not PO Box) Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Zip: \_\_\_\_\_ Date \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

FAX: \_\_\_\_\_ VA SCC Business Registration # \_\_\_\_\_  
See Section V "Proof of Authority To Transact Business In VA"

***This Proposal contains appropriately marked proprietary and/or confidential Information. \_\_\_Yes \_\_\_No***

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability or that this document be made available in an alternate format, call 703 248-5007, (TTY 711).

The City of Falls Church does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**RFP No.0520-14-DMTC**  
**Dance, Music and Tennis Hobby Classes**

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**EXHIBIT 1 - PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA – MUST BE RETURNED WITH PROPOSAL**

## I. SUBJECT

The City of Falls Church ("City") is soliciting proposals from qualified Offerors to provide Dance, Music and/or Tennis Hobby Classes as is further described herein.

## II. GENERAL

- A. ACCESS TO RFP UPDATES: This RFP and any addenda are available on the City of Falls Church's website: [www.fallschurchva.gov/Bids](http://www.fallschurchva.gov/Bids). This solicitation and any associated addenda may also be published through eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (<http://eva.virginia.gov>).
- B. Offerors are reminded that changes to the RFP, in the form of addenda, are often released between the RFP issue date and within three (3) days before the closing of the RFP. **Offerors are solely responsible for checking the Website to insure that they have the most current information regarding the RFP.**

All addenda must be signed and submitted with your proposal.

- C. All questions pertaining to this solicitation must be in writing and received by no later than five (5) business days prior to the RFP closing date. All questions shall be directed only to:

George Armstrong, Purchasing Agent  
The City of Falls Church  
300 Park Ave, Falls Church, VA 22046  
[garmstrong@fallschurchva.gov](mailto:garmstrong@fallschurchva.gov) Phone: 703.248.5007  
with a copy to [dwoodbury@fallschurchva.gov](mailto:dwoodbury@fallschurchva.gov)

No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of proposals, will be given any consideration. Any material question or interpretation of a requirement or specification, as determined by the Purchasing Agent, will be expressed in the form of an addendum which will be posted on the City's website [www.fallschurchva.gov/Bids](http://www.fallschurchva.gov/Bids) no later than three (3) days before the date set for receipt of proposals. If utilized for the initial RFP release, addenda will also be published through eVA (the Commonwealth of Virginia's e-procurement portal for registered suppliers).

Oral answers will not be authoritative.

- D. The City is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to the City.
- E. ACCEPTANCE OF PROPOSALS - BINDING 120 DAYS: All proposals submitted shall be binding for a one hundred and twenty (120) calendar days following solicitation opening date, unless extended by mutual consent of all parties.
- F. CONTACT RESTRICTED - No Offeror shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Agent or Purchasing Agent's designee concerning or related to this RFP, after the date of this solicitation's release and before award or cancellation of this RFP except with the foreknowledge and permission of the Purchasing Agent or his/her representative. Any contact in contradiction to this requirement is prohibited and may cause the disqualification of the Offeror from this procurement process.
- G. This solicitation is being conducted in accordance with the guidelines of the Competitive Negotiation (for other than Professional Services) method of contractor selection per the Virginia Public Procurement Act (VPPA). Historically, the contract expenses for the provision of the services specified herein have been at a level which requires formal competition as defined by the VPPA.

### III. COMPETITION INTENDED

- A. It is the City of Falls Church's intent that this Request for Proposals (RFP) permits competition. It shall be the Offeror's responsibility to advise the City's Purchasing Agent, in writing, if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be received by the Purchasing Agent not later than five (5) business days prior to the date set for acceptance of proposals. Any such notification shall be sent to the City's Purchasing Agent's email address: [garmstrong@fallschurchva.gov](mailto:garmstrong@fallschurchva.gov) with a copy to [dwoodbury@fallschurchva.gov](mailto:dwoodbury@fallschurchva.gov). Confirmation of email receipt shall be the responsibility of the notifying bidder.
- B. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All qualified Offerors are encouraged to submit proposals.

### IV. ELIGIBILITY

The following minimum requirements for proposal submission:

- A. The Offeror must submit their Virginia State Corporation Commission ("SCC") registration number or justification for exemption. See Section below entitled "Proof of Authority to Transact Business in Virginia" and Exhibit 1.
- B. The Offeror must be licensed in accordance with any specific requirements of this solicitation and the Code of Virginia (Licensed Engineer, Contractor's license, etc.).  
  
It is the Offeror's sole responsibility to have knowledge of the applicable license(s), if any, associated with this solicitation's scope of work. Any applicable license(s) shall be maintained during the term of any resultant contract.
- C. Any person or firm, or agent of any person or firm, currently suspended or debarred from participation in City procurement, conducting business or submitting proposals on contracts by any other local government or agency of the Commonwealth of Virginia, or the Federal Government is not eligible for contract award under this solicitation.
- D. Any current debarment (Federal, state or local jurisdiction) must be disclosed on the Company Information Form attached to this solicitation.

### V. PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

- A. State Corporation Commission (SCC) registration requirements effective July 1, 2010 require that your bid/proposal include the identification number issued by the State Corporation Commission as proof of registration or justification for non-registration, per the requirements in this section. **Failure to provide this information or providing inaccurate or purged information may result in your bid/proposal being rejected.**
- B. A firm organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its proposal the identification number issued to it by the Virginia State Corporation Commission (SCC). The Offeror's SCC ID number shall be provided on the cover sheet of this solicitation on the line entitled "VA SCC Business Registration #". A VA SCC Business Registration number **IS NOT** the same as a Tax ID Number ("TIN") and may require significant time to acquire from the SCC, if necessary.
- C. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its proposal by the City, a signed statement attached to the Cover Sheet of this RFP, describing why the Offeror is not required to be so authorized under Title 13.1 or Title 50 of the Code of Virginia. Any falsification or misrepresentation contained in the statement submitted by the Bidder/Offeror pursuant to Title 13.1 or Title 50 may be cause for debarment.

- D. Any Offeror described herein that fails to provide the required information or for whom such signed exception is not considered valid by the City, shall not receive an award unless a waiver of this requirement is granted, in writing, by the City Manager.
- E. The City can not provide advice to Offerors regarding their obligations or applicability under this section. Please refer questions to the Virginia State Corporation Commission ([www.scc.virginia.gov](http://www.scc.virginia.gov)) and/or your legal counsel.

## **VI. RIGHTS OF THE CITY**

- A. Among the indisputable rights of the City specified herein, the City, at its sole discretion may:
  - 1. cancel, withdraw or re-advertise this RFP; accept or reject all or any part of proposals; and/or waive minor technicalities/informalities.
  - 2. award a contract to multiple Offerors by individual items, in the aggregate, or in combination thereof whenever any such actions are in the best interest of the City.
  - 3. issue solicitations and/or make awards for similar work and other projects as the need may occur; issue Purchase Orders and/or expand or otherwise modify existing Purchase Orders for work similar to that being proposal hereunder, in consideration of the City's knowledge and/or evaluation of each Contractor's qualifications, expertise, capabilities, performance record, current ability to perform, location and/or distance to the project, and any and all other factors as may be pertinent to the particular project and for the convenience of the City.
  - 4. add, delete or change services, locations, requirements, frequency of service, or other factors related to the goods and/or work under contract dependent upon requirements that may develop during the contract period and cannot guarantee the amount of work or predict future funding for any resultant contract.
  - 5. use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.
- B. This is a Request for Proposals and is in no way to be misconstrued as a commitment to purchase on the part of the City.

## **VII. PRE-PROPOSAL CONFERENCE**

There will be no Pre-proposal conference.

## **VIII. PURPOSE AND BACKGROUND**

- A. The City provides specialty classes to serve community residents through its Recreation and Parks Department. These classes include specific programming for infants, toddlers, youth, teens, adults and senior adults. Classes may be offered for infants to senior adults in appropriate age groupings: infant 0-3 years; toddlers 3-5 years, youth 6-12 years, teens 13-17, adults-18 and older, and senior 55 and older. Although participants aged 55 and older may take any "Adult" program, there are numerous, specific Senior Adult classes planned and offered that are substantially subsidized for city residents at 50% of the regular cost.
- B. The City's Recreation and Parks Department offers year round classes three times a year. Winter/Spring is January through May. Summer is June through August. Fall is September through December. Start dates for each quarter varies.
- C. The Falls Church Community Center is located at 223 Little Falls St., Falls Church, VA.

## **IX. SCOPE OF WORK AND REQUIREMENTS**

- A. Overview
  - 1. The following activities can be held at any City facility (specific facility to be determined), at the successful Offeror's place of business or other off site location. Please indicate in your proposal the preferred location(s) for the activity(s):

- DANCE
- MUSIC
- TENNIS

**B. General Specifications**

1. The minimum, optimum and maximum number of participants for each class shall be included in the Offeror's proposal.
2. The amount of space desired (i.e. gyms, rooms) should be included in request. The final decision on how much and what space made available will be made the City.
3. Firms must provide in the proposal a curriculum of clearly defined goals and objectives for each class proposed in the psychomotor (physical), cognitive (intellectual) and affective (social) domains. These goals and objectives shall be consistent with the instructional content of the class.
4. Instructors are required to take attendance at every class. The signed sheets should be submitted at the end of the session to the City representative. Contractors are responsible for assuring students are dropped off and picked up by a parent, legal guardian, or staff from the Recreation and Parks department.

**C. Staffing Requirements**

1. The Instructor shall possess extensive experience in the development, organization and direction of the class program, and shall be of sufficient maturity and stability in the opinion of the City to properly supervise the program.
2. Instructors must have significant training and experience in the hobby class. Significant experience in comparable activities working with youth groups is also highly desirable.
3. Staff members shall be at least 16 years of age.
4. Firms must have in place an organized and comprehensive procedure for the screening, selection and assignment of their staff members. Contractors must provide with their proposal a descriptive listing of the experience and education of staff members to be assigned to the program. The City reserves the right to reject proposed staff members assigned during the contract term, or require the immediate removal of staff members previously approved, who, in the sole opinion of the City, do not meet the City's criteria for the assignment.
5. Key personnel named in the proposal will remain responsible throughout the period of this contract. No diversion or replacement may be made without submission of a resume of the proposed replacement with final approval being granted by the City's Hobby Class Program coordinator.
6. The contractor will submit a Criminal History Police Check report on each of their staff members. This request is made in accordance with title 19.2, section 389, Code of Virginia, and if requested by the department a complete background check for every person who will be working with children.

**D. Evaluation**

At the completion of each session an evaluation form, designed by the Recreation and Parks Department is to be given to each participant to evaluate the class.

**E. Participant Fees**

The Offeror shall submit in their proposal a schedule of fees for each proposed class. Fees must include the City's administrative percentage.

F. Registration

Promotional flyers and registration forms will be printed by the Recreation & Parks Department. Registration will take place at the Falls Church Community Center, with payment made to the City.

G. Payment To The City

As payment for the use of the facilities, publicity, and for handling the registration, the City will keep an agreed upon fee per student registered (generally at least 30%).

H. Invoicing and Payment To The Contractor

Payment will be issued to the contractor upon final satisfactory completion of the class session, receipt of a complete and undisputed invoice and the City's verification of class enrollment numbers. Contractors should request a copy of the applicable class roster before submitting an invoice which should not include the \$10 non resident user fee.

Contractor's invoice must include the contractor's name and address; assigned activity number, the name of the class, number of verified participants, cost for the session, and total amount owed. The invoice must also be dated and have a unique invoice number.

All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on vendor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act (1%per month).

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

The City shall not make modifications to Contractor's submitted invoice. If a correction is needed, the contractor must submit a revised invoice.

I. Facilities

The facilities are subject to change and based on availability. Most of the facilities are jointly used by the school district and Recreation Department, and the schools have priority use of all of the facilities.

J. Contractor Responsibilities

1. The contractor will be responsible for repair or replacement of any equipment belonging to the City or the City Schools, which is damaged, destroyed or broken by any of the student or staff. The contractor will be required to assume full replacement responsibility for any City or City School property, issued to the contractor for use in the class that is stolen or lost.
2. The contractor will be responsible for assuring that all students have been picked up by their parents or individuals designated by the parents or guardian prior to departure from the class. If any problem arises concerning pick up of students, the contractor will contact the Recreation Department staff immediately.
3. The contractor must provide a list of names and addresses of references for which previous classes have been offered, which shall include a title and phone number for a contact person. One (1) City representative may be included on the list but can not be the contractor's only reference.

4. The Offeror must provide a copy of its current business license and insurance certificate.

**K. Subcontractors**

1. Firms may not use subcontractors for the provision of services hereunder except and unless specifically approved in advance by the City. The City reserves the right to reasonably reject the successful Offeror's selection of subcontractors.
2. If the Contractor's use of a subcontractor is approved
  - a. The contractor shall be solely and unequivocally liable and responsible for full payment to subcontractors, all the work they may perform including acts, omissions, compliance with insurance and with the all provisions and requirements of this RFP.
  - b. The contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.
  - c. Nothing contained in the contract shall create any contractual relationship between any subcontractor and the City.

**X. CONTRACT PERIOD AND RENEWAL OPTIONS**

- A. The proposed contract shall cover the period from date of award through a one (1) year period (Initial Term) or as otherwise mutually agreed upon.
- B. The City reserves the right to renew Contracts/POs upon the same terms and conditions at the expiration of its Initial Term for four (4) additional, successive one-year periods, except as otherwise provided herein, contingent upon availability of funds for the purpose and the needs of the City. Contract renewals must be in writing authorized by and coordinated through the City's Purchasing Department. Automatic contract renewals are prohibited. .
- C. Notice of intent to renew will be given to the Contractor in writing by the City normally sixty (60) days before the expiration date of the current contract term. Failure to give such notice will not constitute a breach of this contract. This notice will not be deemed to commit the City to a contract renewal.
- D. Contractor shall notify the City, in writing, at least ninety (90) days prior to the then current contract period expiration if Contractor intends not to extend the contract term.
- E. The City may extend the term of an existing contract for goods/services to allow completion of any work undertaken but not completed during the original term of the contract.
- F. **NON-APPROPRIATION OF FUNDS** - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Falls Church City Council, as applicable. . In the event of non-appropriation of funds by the City Council for the goods/services provided under contract, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the goods/services covered by the contract is spent, whichever event occurs first.

**XI. PRICES AND PRICE ADJUSTMENTS**

- A. The Contractor agrees that for the contract unit prices shall remain firm for the initial term of the contract or 365 days, whichever is later. Thereafter, the Contractor may request, in writing, an increase in unit prices once every 365 days to coincide with the contract anniversary.
- B. The Contractor shall provide the City prior written notice of any potential increases at least sixty (60) days prior to the proposed effective date of such increase.
- C. The request for a change in the prices shall include as a minimum, the cause for the adjustment and the proposed effective date and, the amount of the change requested.



- D. If the Contractor wishes to increase the unit price after the first year of the Contract, the request must be made in writing to the Purchasing Agent with a copy to the Recreation Program Manager. Contractors currently under contract must honor their current contract prices until the new contract programs begin.
- E. The request for a change in the unit price shall include as a minimum: (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e. increased costs to the Contractor or prices of similar programs held in the same geographic area within thirty (30) miles of the City. Such requested contract unit price increase shall become effective only upon approval by the Purchasing Agent. Should the price increase be approved, that price shall remain firm for a period of not less than 365 days.
- F. Any orders placed prior to the proposed effective date of the increase shall not be subject to such increase.

## **XII. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:**

- A. Unless otherwise specified, the potential tasks and/or quantities of goods identified in this RFP are for information to the Offeror and for proposal evaluation purposes only. They do not necessarily indicate the actual tasks or goods that will be ordered since such tasks /goods will depend upon requirements that develop during the contract period.
- B. Tasks/goods or quantities thereof described in this RFP shall not be construed to represent any amount of goods or services of which the City shall be obligated to purchase under the contract, or relieve the contractor of his obligation to deliver goods and/or perform all services which may be ordered under the contract.
- C. The City reserves the right to expand or delete goods and/or services as necessary and cannot guarantee the amount of goods or work or predict funding for planned projects.
- D. No proposal will be considered which stipulates that the City shall guarantee to order a specific good, service, task or quantity thereof.

## **XIII. DEBARMENT STATUS**

By submitting a proposal, the Offeror (including any partner, associate, or subcontractor associated with the provision of goods/services under this solicitation) certifies that they are not (1) currently debarred from conducting business or submitting bids or proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting bids/proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the Excluded Parties List of the Federal Government.

## **XIV. AMBIGUITY, CONFLICT OR OTHER ERRORS IN THE RFP**

- A. If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposal, it shall immediately notify the City of such error in writing and request modification or clarification of the document. The City will make modifications to material issues by issuing a written revision and will give written notice via addendum posted on the City's website: [www.fallschurchva.gov/Bids](http://www.fallschurchva.gov/Bids) and eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers: <http://eva.virginia.gov>.
- B. The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal.

**XV. CONTRACT DOCUMENTS**

- A. This solicitation, including all addenda, attachments, exhibits and/or appendices hereto, shall become a part of any contract that may be awarded inclusive of any terms, conditions and/or provisions that may be changed, added to, deleted, or modified as may be agreed to between the City and the Offeror during negotiations.
- B. Other documents which shall become a part of any resultant contract include but are not limited to:
  - 1. Offeror's Proposal and any modifications accepted by the City
  - 2. Proposal clarifications; responses to questions/issues.
  - 3. Documents submitted in conjunction with oral discussions/presentations.
  - 4. Memoranda of Negotiations
- C. EXCEPTIONS – This solicitation contains terms and conditions the City favors and intends to use in any resultant contract. The City reserves the right to negotiate any and all exceptions in its best interest.
- D. There is no binding agreement, no contractual relationship, no understanding nor mutual assent until a contract is signed, executed and exchanged by and between authorized representatives of the Offeror and the City
- E. The contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The contract may be amended or modified only by written modification.

**XVI. PROPOSAL PREPARATION**

- A. Before submitting a proposal, the Offeror must read the entire solicitation. Failure to read any part of this solicitation shall not relieve the Contractor of its contractual obligations.
- B. The RFP cover page must be completed as required, signed in ink by Offeror's representative with the AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT, and returned with the proposal.
- C. All information requested must be submitted. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion. Proposal contents should be arranged in the same order and identified with headings as presented herein.
- D. The City reserves the right to accept or reject all or any part of proposals, waive minor technicalities/informalities and award the contract to the most qualified and best suited Offeror to best serve the interest of the City.
- E. Failure to submit all information requested may result in the Purchasing Agent requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion.
- F. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of context. Unnecessarily elaborate proposals, brochures of other presentations, expensive paper, bindings, visual and other presentation aids beyond that sufficient to present a complete and effective proposal are neither required nor desired.
- G. Each copy of the proposal should be bound in a single volume. The City encourages the use of recycled goods, therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
- H. The City will not consider information other than the materials provided in a duly submitted proposal and/or subsequent interviews for proposal evaluation purposes.

## XVII. PROPOSAL SUBMISSION REQUIREMENTS

### A. Specific Requirements

1. Offerors are required to submit two (2) complete hard copy proposal packages consisting of one (1) original (clearly marked as such on the cover of the proposal package) and one (1) copy of each proposal to include the information and format described herein.
2. In addition to the hard copies, each Offeror shall submit one (1) full text searchable, indexed PDF electronic copy of their complete Proposal on CD, DVD, or removable USB media with the Proposal package.
3. If the Proposal contains proprietary or confidential information in accordance with the section "Trade Secrets or Proprietary Information" herein, the Offeror shall also submit one (1) separate, sealed redacted hardcopy of the proposal along with a separate, redacted version of the searchable, indexed PDF both clearly marked as such.
4. The electronic copy removable media(s) shall be clearly marked with the RFP number, Firm's name, date of Proposal, and redacted ID if applicable.
5. The hard copy proposal shall be the Offeror's "official" Proposal and shall meet all requirements for submission by the due date and time specified herein. **The electronic copy will not be accepted in lieu of the hard copy Proposal.**
6. Submit proposals in the order outlined below. Each section should be separated by tabs, clearly labeled and with pages numbered.
  - a. **RFP Cover Page** - First Page of this RFP, completed and signed in ink by person authorized to bind the company. In addition, Offerors should include required attachments such as Addenda (dated & signed), copies of Contractor's license(s), Proprietary Information (see Section XIX.B), and/or exceptions for VA SCC Business Registration, or contractor's license(s) if applicable.
  - b. **Proposal** - addressing details in Section IV "Scope Of Work and Requirements" to include (For **EACH Class** proposed). Include details of the classes, Offeror's qualifications and ability to fulfill the goods/services required, Information that addresses how Offeror would fulfill the requirements, etc. Include and clearly mark any proposed from that prescribed in the Scope of Work.
  - c. **Detailed Cost Proposal** - for each Class proposed.
  - d. **References** - Provide a minimum of three (3) commercial or governmental references (in addition to the City if applicable) who could attest to the Offeror's past performance to provide product/services similar to those required for the contract. The list should include company or public body name, contact persons, telephone numbers and email addresses.  
  
Firms may also attach any recommendations and/or evaluations from current or previous clients and/or students/parents of students that demonstrate success with similar programs.
  - e. **EXHIBIT 1 - Proof of Authority to Transact Business in Virginia** – Must be returned with Proposal.
7. The City reserves the right to accept, reject and/or negotiate proposals as submitted including any proposed change(s) in the scope, terms and conditions or other provision of this RFP.

**B. General Requirements**

1. Proposals shall be placed in a sealed, opaque envelope, and clearly marked in the lower left-hand corner with the RFP number, RFP title, and the date/time proposals are scheduled to be received. Proposals are to be submitted by mail, courier or delivered in person **ONLY** to:

Attn: **Purchasing Agent**  
City Of Falls Church  
300 Park Avenue, Rm 300 E, 3<sup>rd</sup> Floor, East Wing  
Falls Church, Virginia 22046 / (703) 248-5007

- C. The City Purchasing Office is open for the receipt of proposal from 8:00 AM until 5:00 PM, Monday through Friday (excluding City holidays). The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.
- D. The time of receipt shall be determined by the time the hard copy proposal is signed in at the Purchasing Office. Offerors are solely responsible for ensuring that their proposal is stamped by Purchasing Office personnel.
- E. **Any proposal received after the proposal due date and time as detailed on the first page of this solicitation whether by mail or otherwise, will not be accepted or considered.** The time of receipt shall be determined by the time the proposal is signed in at the Purchasing Office. Offerors are solely responsible for ensuring that their proposal is stamped by Purchasing Office personnel by the deadline indicated.  
The City is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, the intra-City mail system or delivery by other means. Offerors are solely responsible for ensuring that their proposal is received and stamped by Purchasing Office personnel by the deadline indicated.
- F. See paragraph A.2 above for information on submission requirements for the PDF copy of the Proposal.
- G. The City, and its officers, employees or agents will not be responsible for the opening of a proposal envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.
- H. If the City declares administrative or liberal leave, scheduled receipt of proposals will be extended to the next business day after which administrative or liberal leave has been canceled.
- I. Oral proposals or proposals delivered by electronic means such as facsimile and e-mail are not allowed and proposals so delivered will not be considered.
- J. Questions regarding this solicitation must be in writing and received by no later than five (5) business days prior to the RFP closing date. No inquiries, if received by the Purchasing Agent in less than five (5) business days of the date set for the opening of proposals, will be given any consideration. Any material interpretation of a specification, as determined by the Purchasing Agent, will be expressed in the form of an addendum which will be sent to all prospective Offerors and/or posted on the City's website [www.fallschurchva.gov/Bids](http://www.fallschurchva.gov/Bids) no later than three (3) business days before the date set for receipt of proposals. Oral answers will not be authoritative.
- K. **Offerors are solely responsible for checking the City's Website to insure that they have the most current information regarding the RFP.**
- L. All erasures, interpolations, and other changes in the proposal shall be signed or initialed by the Offeror. Carelessness in quoting business terms (i.e. prices), or in preparation of the proposal will not relieve the Offeror. When an error is made in extending total prices, the unit price will govern. Offerors are cautioned to recheck their proposals for possible error. Correction of errors discovered after negotiation are subject to the City's acceptance or rejection of such and the Offeror may be required to perform if its proposal is accepted.

- M. Conditional proposals are subject to rejection in whole or in part.
- N. Under no circumstances shall an Offeror, whose proposal has not been awarded, be entitled to any claim for compensation under this solicitation.
- O. Under no circumstances shall an Offeror, whose proposal has not been awarded, be entitled to any claim for compensation under this solicitation.

**P. Proposal Submission Covenants**

The Offeror's signature on the RFP Cover Page covenants and certifies acknowledgement and compliance with following:

- A. Fully Informed - The Offeror acknowledges that they have read this solicitation, understand it, has satisfied itself from its own investigation of the conditions to be met and/or goods to be provided, fully understands Offeror's obligation, agrees to be bound by this solicitation's terms and conditions (except as otherwise explicitly provided in writing), and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information. In addition the Offeror has or will provide properly trained employees, staff, subcontractors (if approved by the City), or other personnel; and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations; that in any manner may affect the cost, delivery, progress, or performance of goods and/or work proposed and to be provided under this RFP.
- B. Collusion - In the preparation and submission of this RFP, the Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.
- C. Employees Not to Benefit
  - 1. To the best of the Offeror's knowledge, no City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family (including spouse, parents or children), has received, been promised, directly or indirectly, or will receive any financial benefit, including but not limited to fees, commission, finder's fee, political contribution or any similar form of remuneration, or other financial benefit of more than nominal or minimal value on account of the act of awarding and/or executing this contract.  
  
If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
  - 2. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "1" has been or will be received in connection with a proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
  - 3. In the event the Offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the Offeror shall address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. Relevant Invitation including the RFP Number should be referenced in the disclosure.

- D. Licenses and Insurance - The firm submitting the Offeror is licensed and registered to do business in the Commonwealth of Virginia and has the current Contractor's licenses as may be required under this solicitation as of the date of Offeror submission.

if awarded the contract, the Contractor shall have insurance coverages as specified in section entitled "Standard Provisions", sub-section entitled "Insurance" at the time the work commences and shall submit proof of such insurance to the City as stipulated in that section.

- E. Ethics In Public Contracting - The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Public Procurement Act as set forth in the Code of Virginia, as amended, pertaining to Offerors, Offerors, contractors, and subcontractors are applicable to this solicitation. By submitting a proposal, the Offeror certifies that their proposal is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
- F. Conflict of Interest - The provisions referenced in the paragraph above entitled "Ethics In Public Contracting" above, supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
- G. Employment Discrimination By Contractor Prohibited - During the performance of any resultant contract, the Offeror will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, and Section 2.2-4311 of the Virginia Public Procurement Act which provides that:

In every contract over \$10,000.00 the provisions in "a" and "b" below apply:

- a. During the performance of this contract, the contractor agrees as follows:
  - 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

- H. Drug Free Workplace

Every Contract over \$10,000 the following shall apply:

During the performance of any resultant contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a

statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

#### **XVIII. TRADE SECRETS OR PROPRIETARY INFORMATION**

- A. Trade secrets or proprietary information submitted by an Offeror in response to this Invitation for bids shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Offeror must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).
- B. If the proposal contains any proprietary or trade secret material, such notice must be attached as the **first page of the proposal and clearly identify the material/information** by some distinct method such as highlighting/underlining or submitted in a separate and clearly labeled section. In addition, the Offeror must (i) indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information and (ii) clearly state the justifiable reason why protection is necessary.
- C. **Classification of an entire proposal document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the bid.**

#### **XIX. PROPOSAL EVALUATION CRITERIA**

- A. The City's will review each Offeror's proposal. Proposals determined not to meet one or more material RFP requirements may be excluded from further consideration.
- B. Major factors to be considered in the evaluation will include, but shall not necessarily be limited to the goods/services, tasks, specifications, and/or requirements referred to in the Scope or Statement of Work and the criteria set forth below:
  - 1. Staff Qualifications and Experience
  - 2. Reasonableness of Cost Proposal - Income potential to the City and costs to participants
  - 3. Depth of Response to the Statement of Work and Requirements
  - 4. References
  - 5. Proposal Compliance
- C. In addition to evaluating the Offeror's proposal as submitted, the City may make such reasonable investigations and evaluations as deemed proper and necessary to determine the ability/capability of the Offeror to perform the services/furnish the goods. Such investigations may include the Offeror's fiscal responsibility (current Dunn and Bradstreet "Business Information Report", other equivalent independent study, or audited financial statements, etc.); on-site visitations to inspect and/or assess the Offeror's physical facilities and other capabilities; documentation that Offeror is licensed under applicable laws of the Commonwealth of Virginia; certification of other Offeror claims; and/or contract references.

The Offeror agrees to cooperation and shall furnish to the City all such reasonable information/data and/or access for this purpose as may be requested.

The City further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the City that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- D. If in the City's opinion, clarifications or presentations of the Offeror's proposed services and/or goods' features and capabilities are warranted for the purpose of obtaining additional information or clarification, the City will notify the appropriate Offerors. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session and may or may not include the opportunity for initial negotiations should the City so determine. Oral presentations are strictly at the option of the City and may or may not be conducted. Therefore, proposals should be comprehensive, competitive and complete.
- E. The City reserves the right to accept or reject any or all proposals, to waive informalities, and to reissue any request for proposals and to award contracts to multiple Offerors.

## **XX. BASIS OF AWARD**

- A. Following evaluation of the written Proposals as submitted, the City will make selection of Offerors deemed to be fully qualified and best suited among those submitting Proposals, on the basis of the factors involved in the RFP, including price. The City may request the selected Offerors to make oral presentations.
- B. Awards under this RFP will be made to the highest qualified responsive Offeror(s) whose proposals are determined by the City, in writing, to be the most advantageous to the City taking into consideration price, evaluation factors specified herein and other information and analysis the City may secure or develop, the overall combination of which, in total, are optimal relative to the City's needs.
- C. Following evaluation of the written proposals as submitted, selection shall be made of Offerors deemed to be fully qualified and best suited among those submitting Proposals, on the basis of the factors involved in the RFP, including price.
- A. Should the City determine in writing and in its sole discretion that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- B. If two or more Offerors are deemed to have fully and highly qualified, negotiations shall then be conducted with each of the selected Offeror(s). The City may undertake concurrent negotiations with the selected Offerors. Individuals representing the Offeror during negotiations shall have the authority to negotiate and contractually bind the company to a contract. Negotiations may be conducted face to face, via telephone, via email, or other correspondence.
- C. After negotiations have been conducted with each Offeror so selected, the City shall select the Offeror which, in the City's opinion, has made the best proposal, and shall award the contract to that Offeror or to multiple Offerors should the City decide this to be in its best interest.
- D. The City reserves the right to conduct a cost or price analysis for any proposed procurement. If only one proposal is received in response to the RFP or the City otherwise determines that there is insufficient competition, a cost proposal and analysis of three (3) contracts, if available, awarded to the Offeror within the past two (2) years may be requested of the single Offeror. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable
- E. The Proposal Evaluation results shall remain confidential until after the Notice of Contract Award and contract execution with the successful Offeror(s). Properly designated proprietary



information from competing Offerors shall not be disclosed to the public or competitors, except as may be required by law.

- F. All awards for non-professional good and services over \$100,000 are contingent upon City Council approval.
- G. Public announcement of an award or intent to award will be posted on the City's website: [www.fallschurchva.gov/Bids](http://www.fallschurchva.gov/Bids).
- H. The City is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous. The City is also not required to debrief Offerors.

#### **XXI. PROTEST OF AWARD OR DECISION TO AWARD**

Any Offeror may protest the award or decision to award only in accordance with the provisions of Sections 2.2-4357 through 4364 of the Code of Virginia, and only if such is provided for in such Code section.

#### **XXII. COOPERATIVE PROCUREMENT**

- A. As authorized in Section 2.2-4304 of the Code of Virginia, this procurement is being conducted on behalf of other public bodies. Any resultant contract may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor at the same prices and/or discounts and terms.
- B. Each jurisdiction and/or political subdivision has the option of executing a separate agreement with the Contractor after making their own legal determination as to whether the use of this contract is consistent with their laws, regulations, and other policies. Such other contracts may contain general terms and conditions unique to those jurisdictions and/or political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body or political subdivision.
- C. The City assumes no responsibility for any notification of the availability of any resultant contract for use by other public bodies. It is the responsibility of the Contractor to notify the jurisdictions and/or political subdivisions of the availability of any contract resulting from this solicitation.

#### **XXIII. TAX EXEMPTION**

The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number 54-6001271 applies. Certificated furnished upon request. The price offered must be net, exclusive of taxes.

#### **XXIV. ORDER OF PRECEDENCE**

- A. In the event that there is a conflict between any specific terms, conditions and/or provisions of this RFP, the specific provisions of the RFP shall take precedence over the "Standard Provisions" which shall take precedence over the "General Conditions and Instructions to Offerors" sections herein.
- B. In the event there is a conflict between any specific terms, conditions and/or provisions of contract documents resulting from this solicitation, the contract shall take precedence over the Request for Proposals which shall take precedence over the Offeror's response to the Request for Proposals unless otherwise stipulated in the contract.

**XXV. STANDARD PROVISIONS**

The headings of the sections in the “Standard Provisions” and/or “General Conditions and Instructions to Offerors” are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.

**1. Authority to Transact Business in Virginia**

A Contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the City pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The City may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

**2. Choice Of Law and Courts**

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court of the City of Falls Church or in the Circuit Court of the County of Arlington, Virginia.

**3. Compliance With Laws**

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

The Contractor shall comply with the Code of Virginia including Section 2.2-4300, the Virginia Procurement Act; well as the City Code, Ordinances, Laws and Policies which are all incorporated herein by reference.

**4. Procedures**

The extent and character of the services to be performed by the Contractor(s) or goods delivered shall be subject to the general control and approval of the City's Project/Contract Manager assigned under the contract, the Purchasing Manager or his/her authorized designee(s). The contractor shall only comply with requests and/or orders issued by the Project/Contract Manager or his authorized designee(s) acting within their authority for the City.

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and any material change to the contract must be approved in writing by the Purchasing Agent and the Contractor to be deemed binding.

**5. Key Personnel/ Project Staff**

Any personnel named in the offer details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No

diversion or replacement may be made without advance written notice to the Purchasing Agent and submission of a resume of the proposed replacement for review and approval by the City.

NO substitutions, additions or cancellations, including those of key personnel, are permitted after Contract award without written approval by the City's Purchasing Agent or his/her designee. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless the City agrees to a substitution. Requests for substitutions shall be reviewed and may be approved by the City at its sole discretion.

The City will, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

Where required, personnel used by the Contractor to perform under the contract shall be licensed and certified as required by the Virginia Board for Contractors. Contractors shall submit evidence of licensing, trades certification and training within five (5) calendar days of the City's request. The City reserves the right to reject any of Contractor's service personnel who, in the City's judgment, are not adequately qualified to perform the work.

## **6. Purchase Orders**

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Except as provided herein, Contractors providing goods or services without a signed City purchase order, do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

In case of an emergency as defined by the City Project Manager, Contract Manager or other authorized representative, the Contractor shall cooperate to the extent reasonably requested with the understanding that a Purchase order will follow.

Orders for less than \$1,000.00 do not require a Purchase Order per the City's Procurement Policy and Guidelines incorporated herein by reference.

## **7. Work Site Damages**

Any damage to property, whether owned by the City or others, resulting from work performed under this contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

## **8. Ownership of Material**

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the solicitation shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act.

## **9. Use Of Information:**

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise

(all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

#### **10. Workmanship, Inspection and Acceptance**

Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from work that the City deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or goods delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent ("Inspector") shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in the section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

#### **11. BPOL License Requirement**

Contractor shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301; Phone: (703) 248-5019; Fax: (703) 248-5212.

**12. Invoicing**

All invoices to the City shall reference the applicable Purchase Order number and be submitted to the name and address on the Purchase Order unless otherwise directed by the City.

The prices and payments shall be full compensation for the goods, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the goods and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

Invoices for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

**13. Changes**

The City may, at any time, by written order, require changes in the services to be performed or the goods to be provided by the Contractor under contract.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of goods under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Contractor shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representative of the parties shall then agree to and sign such modification to the purchase order or contract. Contractor's receipt and performance of a Purchase Order detailing such changes shall be deemed acceptance.

The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Contractor. No goods or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the goods/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

**14. Additions/Deletions:**

The City reserves the right to add similar goods/services or delete goods/services specified in the resultant contract as requirements change during the period of the contract by contract amendment. The City and the Contractor will mutually agree to prices for goods/services to be added to the contract and/or reduction in overall costs for items/services deleted.

**15. Safety**

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract. The City has sole right to dismiss contractors and/or sub-contractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

#### **16. Communications**

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the contractor's employees. Failure to have an English- speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

#### **17. Warranties & Guarantees**

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

Contractor represents and warrants that all goods will be new, free from defects in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Contractor will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified such adjustments, repairs and replacements will be provided at no additional cost to the City during the applicable warranty term. Contractor further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Contractor's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

All warranties shall survive inspection, acceptance and payment.

Contractor's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Contractor shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

The Contractor agrees to: furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

The City's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter

#### **18. Default**

In case of failure to deliver goods, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

**19. Contract Disputes Resolution**

Arbitration shall not be applicable but the parties shall negotiate in good faith to resolve any dispute arising under the contract. The Contractor's dispute shall detail all pertinent facts of the dispute and the Contractor's desired outcome.

Contractual disputes, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the dispute is based. Any notice or dispute shall be delivered to the City's Purchasing Agent, 300 Park Avenue, 3<sup>rd</sup> Floor East Wing, Falls Church, VA and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested. The Purchasing Agent shall render a decision on the claim and shall notify the Contractor within thirty (30) days of receipt of the dispute. The Contractor may appeal the decision of the Purchasing Agent to the City Manager by providing written notice to the Purchasing Agent, within fifteen (15) days of the date of the decision. The City Manager shall render a decision on the dispute within 60 days of the date of receipt of the appeal notice and such decision shall be final unless the Contractor appeals the decision in accordance with the Virginia Public Procurement Act. Invoices for all services or goods provided by the Contractor shall be delivered to the City no later than thirty (30) days following the conclusion of the work or delivery of the goods, unless other terms are prescribed by contract.

A Contractor may not institute legal action until all statutory requirements have been met or prior to receipt of City's decision on the claim.

Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

**20. Termination**

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Contractor, the Contractor is obligated and agrees to refund the City any and all monies paid (including advance payments) to it by the City for goods not delivered and/or services not rendered by said Contractor as of the date on which Contractor shall receive Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Contractor. The City may require Contractor to transfer title and deliver to the City any or all items produced or procured by Contractor under this contract for performance of the work terminated.

a. Termination for Convenience

The City may cancel and terminate the contract in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor at least ten (10) business days prior to the effective date. After receipt of a notice of termination, the Contractor must stop all work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issues prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed and accepted performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Contractor for: (1) cause, default, or negligence ("default") on the part of the Contractor; or (2) if the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Contractor shall be liable for all damages to the City resulting from Contractor's default or bankruptcy.

In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

## 21. Delays/Service Failure

Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected goods/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market goods/services of comparable grade/quality to replace the services, goods rejected, and/or not delivered. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

## 22. Indemnification

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.



Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Contractor shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.

The Contractor shall protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

### **23. Insurance**

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
  - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
  - 2) Maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the City, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
  - 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
  - 4) Maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an

owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.

- 5) Maintain Environmental Impairment Liability Insurance including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
- 6) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- 7) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
  - a) Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or
  - b) Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 8) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- 9) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.
- 10) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractors insurance agent or representative. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required
- c. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relive the Contractor and all subcontractors of their liabilities provisions of the contract.
- e. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
- f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons

employed by them as it is for acts and omissions of person directly employed by it.

- g. The City, its officers and employees shall be named as an “additional insured” in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that his coverage “is primary to all other coverage the City may possess.”
- h. If an “ACCORD” Insurance Certificate form is used by the Contractor’s insurance agent, the words, “endeavor to” and “..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company” in the “Cancellation” paragraph of the form shall be deleted or crossed out.
- i. Insurance coverage required by this solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

#### **24. Correspondence**

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and must be in writing to be deemed binding.

#### **25. Quality**

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All goods and services shall meet the then current applicable state and federal rules and guidelines.

All goods provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Goods shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

#### **26. News Release/Publicity By Contractors**

As a matter of policy, the City does not endorse the goods or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

#### **27. Emergency Purchases**

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section “General Terms and Conditions”, paragraph entitled “FORCE MAJEURE”, the Contractor is responsible for providing a backup service, satisfactory to the City, to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor.

#### **28. Americans With Disabilities Act Requirements**

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract resulting from this solicitation acknowledges your commitment and compliance with ADA.

**29. Immigration Reform And Control Act**

By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.be amended.

**30. Virginia Freedom Of Information Act**

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

**31. Funding**

A contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

**32. Assignment**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of the City

**33. Force Majeure**

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

**34. Record Retention/Audits**

The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.

**35. Payments To Subcontractors**

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest

requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

**36. Time Of The Essence**

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.

**37. Reports**

The Contractor must submit status reports as requested and appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.

**38. Antitrust**

By entering into a contract, the contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

**39. Relationship of the Parties**

The Contractor will be legally considered and acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

**40. Severability**

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

**41. Non-Waiver**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the Client of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

**42. Non-Exclusive Market Rights**

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Contractor an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the purchase of any goods or services from Contractor by the City. Contractor understands and agrees that the City is free to and may contract with other manufacturers and Contractors for the procurement of comparable goods or services.

**43. HIPAA Compliance**

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**44. Confidentiality And Return Of Records**

The Contractor agrees that all findings, memoranda, correspondence, documents or records of any type, whether written or oral, and all documents generated by the Contractor or its subcontractors as a result of the City request for services under this Contract, are confidential records ("Record" or "Records"), and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the City's Project Manager or designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Manager or designee for response. At the City's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services under this Contract.

The Contractor agrees to include the provisions of this section as part of any Contract the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

**45. Copyright**

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the APS all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of the Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract

**46. Data Sources**

The City will provide the Contractor with all necessary and available data possessed by the City that relates to the contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

**47. Provisions Required By Law Deemed Inserted**

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

**XXVI. GENERAL DEFINITIONS, CONDITIONS AND INSTRUCTIONS TO OFFERORS**

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City of Falls Church, unless otherwise specified. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, proposals on all solicitations issued by the City will bind Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.
- B. If there is a conflict between the terms and conditions in this "General Conditions and Instructions to Offerors" section, and other provisions, conditions and/or attachments to this solicitation, the other provisions, conditions and/or attachments of this RFP shall take precedence.
  1. DEFINITIONS: The terms defined in this section shall have the meanings set forth below whenever they appear in this Solicitation regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
    - a. BEST VALUE: As predetermined in the Request for Proposal, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.
    - b. OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the City.
    - c. CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
    - d. CITY: City of Falls Church.
    - e. DAY: Unless otherwise specified "day" or "days" shall mean calendar days
    - f. GOODS/PRODUCTS: All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.
    - g. INFORMALITY: A minor defect or variation of a proposal or proposal from the exact requirements of the invitation to proposal or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
    - h. OPEN MARKET PROCUREMENT: A method of competitive solicitation for the purchase or lease of goods, non-professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less than \$50,000.
    - i. PROPOSAL: The offer of a supplier to provide goods and/or services in accordance with general specifications or requirements in a Request for Proposal solicitation (RFP). A proposal is subject to scope and price negotiation.
    - j. PURCHASING AGENT: The Purchasing Agent employed by the City of Falls Church, Virginia.
    - k. REQUEST FOR PROPOSAL (RFP): A request which is made to prospective suppliers (Offeror) for a Proposal. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.
    - l. RESPONSIBLE OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and

- also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.
- m. SERVICES: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
  - n. SOLICITATION: Depending upon the context an RFP or the process of notifying prospective Offerors that the City wishes to receive proposal on a set of requirements to provide goods or services.
  - o. STATE: Commonwealth of Virginia.
2. LEGAL ACTION: No Offeror, potential Offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.
  3. CONDITION OF COMMODITIES: All items proposed shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in proposal invitation/proposal request. Verbal agreements to the contrary will not be recognized.
  4. FORMAL SPECIFICATIONS - When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Offeror will be required to furnish articles in conformity with that specification. The Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
  5. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
  6. SHIPPING - Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.
  7. RESPONSIBILITY FOR SUPPLIES TENDERED - Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
  8. COMPLIANCE-Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the contract. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.
  9. POINT OF DESTINATION-All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
  10. CONTRACT ALTERATIONS - No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
  11. BANKRUPTCY: If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency,



then the City may without prejudice to any other right or remedy, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.

12. GENERAL GUARANTY - Contractor agrees to:

- a. Indemnify and save the City, its agents and employees harmless from any claim or liability of any nature or kind for unauthorized use of any copyrighted or uncopyrighted compositions, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract.
- b. Protect the City against latent defective materials or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- c. Furnish adequate protection against damage to all work and to repair damages of any kind, to the building or equipment, to his/her own work or to the work of other contractors, for which his/her workers or those providing work through Contractor are responsible.
- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the United States, State, County, and City.
- e. Protect the City from loss or damage to City-owned property while it is in the custody or control of the Contractor.

13. SERVICE CONTRACT GUARANTY - Contractor agrees:

- a. To furnish services described in the solicitation at the times and places and in the manner and subject to conditions therein set forth, provided, however, that the City may reduce the said service at any time.
- b. To enter upon the performance of services with all due diligence and dispatch; assiduously press to its complete performance and exercise therein the highest degree of skill and competence.
- c. All work performed and services rendered shall strictly conform to all laws, statutes, regulations, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices, and other agencies.
- d. Said services may be inspected by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. The presence of a City/County/State Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.

14. SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWAM):

- a. The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City. Contact the Virginia Department of Minority Business Enterprise for information regarding certification and certified businesses: <http://www.dmbv.virginia.gov/>
- b. Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

EXHIBIT 1

**THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL. FAILURE TO INCLUDE THIS FORM MAY RESULT IN REJECTION OF YOUR BID/PROPOSAL**

Pursuant to Virginia Code §2.2-4311.2, a Bidder/Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 of the Code of Virginia shall include in its bid/proposal the identification number issued to it by the State Corporation Commission ("VA SCC"). Any Bidder/Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law shall include in its bid or proposal a statement describing why the Offeror is not required to be so authorized.

Any Bidder/Offeror described herein that fails to provide the required information or for whom such signed exception is not considered valid by the City, may not receive an award unless a waiver is granted, in writing, by the City Manager or his designee.

If this bid/proposal for goods or services is accepted by the City of Falls Church, the undersigned agrees that the requirements of the Code of Virginia Section 2.2-4311.2 have been met.

**Please check the appropriate line below and provide the requested information:**

- ☐ A. Bidder/Offeror is a Virginia business entity organized and authorized to transact business in Virginia by the VA SCC; or
- ☐ B. Bidder/Offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the VA SCC.

**A or B. Firm's Identification Number  
as issued by the VA SCC:**

*NOT the same as a Tax ID Number ("TIN")      For A or B above, VA SCC ID Number must be provided.*

- ☐ C. Bidder/Offeror is a Sole Proprietorship and therefore is not required to have a VA SCC number.
- ☐ D. Bidder/Offeror does not have an Identification Number issued to it by the SCC and such Bidder/Offeror is not required to be authorized to transact business in Virginia by the SCC for the following reason(s): (see attached) **Please attach additional sheets of paper if you need to explain why such Bidder/Offeror is not required to be authorized to transact business in Virginia. Falsification of such statement may be cause for debarment.**

**Please attach additional sheets of paper if you need to explain why such Bidder/Offeror is not required to be authorized to transact business in Virginia.**

\_\_\_\_\_  
Legal Name of Company (as listed on W-9)

\_\_\_\_\_  
Legal Name of Bidder/Offeror

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name and Title